

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 569 OF 2019

DIST. : AHMEDNAGAR

Shri Bapusaheb s/o Bhanudas Sase,)
Age. 54 years, Occu. : Service as)
Circle Officer, Tahsil Office,)
Sangamner, Tq. Sangamner,)
Dist. Ahmednagar.) -- APPLICANT

V E R S U S

1. The Collector, Ahmednagar,)
District Ahmednagar.)

2. The Tahsildar, Sangamner,)
Tq. Sangamner,)
Dist. Ahmednagar.)

3. Shri B.K. Datkhile,)
Age. Major, Occ. Service as)
Talathi, R/o C/o Tahsil Office,)
Akole, Tq. Akole,)
Dist. Ahmednagar.)-- RESPONDENTS

APPEARANCE :- Shri V.B. Wagh, learned Advocate for the
applicant.

: Shri M.S. Mahajan, learned Chief
Presenting Officer for the respondent nos. 1
and 2.

: Shri S.S. Dixit, learned Advocate for
respondent no. 3.

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

RESERVED ON : 6th November, 2019

PRONOUNCED ON : 13th November, 2019

ORDER

1. By filing the present Original Application the applicant has challenged the order dtd. 28.6.2019 issued by the respondent no. 01 modifying his posting from the post of Circle Officer, Sangamner, Dist. Ahmednagar to the post of Awal Karkoon (Revenue), Sangamner, Tq. Sangamner, Dist. Ahmednagar and posting the respondent no. 3 in his place.

2. Applicant was initially appointed as a Class IV employee on 15.7.1989. He came to be promoted on the Class III post in the year 2001. He was further promoted to the post of Awal Karkoon on 29.6.2016 and posted at Tahsil Office, Akole, Dist. Ahmednagar. Applicant completed his three years tenure on the said post of Awal Karkoon, Tahsil Office, Akole, Dist. Ahmednagar and therefore he has been transferred to the post of Circle Officer, Sangamner, Tq. Sangamner, Dist. Ahmednagar on the basis of the recommendations of the Civil Services Board and in view of the Government Resolution dated 21.11.1995. Accordingly the res. no. 1 issued the transfer order dtd. 31.5.2019. As per the said order he has to be relieved on the same day, but the Tahsildar, Akole has not relieved him due to pending official work and he relieved him on 24.6.2019 to join on the transferred post. Accordingly the applicant approached the office of the res. no. 2

on 25.6.2019 and submitted his joining report, but the res. no. 2 had not allowed him to join. Therefore the applicant filed report to the res. no. 1 in that regard on 27.6.2019. Respondent no. 1 has not taken cognizance of his application, but on 28.6.2019 modified the earlier transfer order dated 31.5.2019 and transferred the applicant from the post of Circle Officer, Sangamner, District Ahmednagar to the post of Awal Karkoon (Revenue), Sangamner, Dist. Ahmednagar and posted the res. no. 3 at his post only to accommodate the res. no. 3. It is his contention that the res. no. 3 has used political pressure to get accommodation in his place and the res. no. 1 succumbed to the political pressure used by the res. no. 3. The impugned order has been issued without following 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 therefore the same is illegal, arbitrary and issued with mala-fide intention. Therefore he prayed to quash the impugned order by allowing the Original Application.

3. Respondent nos. 1 and 2 filed their affidavit in reply and resisted the contentions of the applicant. They have admitted the fact that by the order dtd. 28.6.2019 the applicant came to be transferred and posted from the post of Circle Officer, Sangamner,

Dist. Ahmednagar to the post of Awal Karkoon (Revenue), Sangamner, Tq. Sangamner, Dist. Ahmednagar on administrative ground and for convenience of the official work and since the post of Circle Officer at Sangamner was vacant because of promotion of Shri D.H. Pote, Circle Officer, Sangamner, Tq. Sangamner, Dist. Ahmednagar. They have admitted the fact that the Tahsildar, Akole relieved the applicant on 24.6.2019 because of the election program declared by the State Election Commission the applicant was appointed as the Returning Officer for the Grampanchayat elections of Ambevangan, Gardani, Terungan, Katalapur, Satewadi, Keli Kotul, Keli Otur, Kauthwadi, Waki, Digambar & Tale Tq. Akole vide order dtd. 27.5.2019 and therefore he had not relieved at the earliest. After declaration of the result of the election on 24.6.2019 the applicant was immediately relieved by the Tahsildar, Akole. It is their contention that the applicant came to be relieved on 24.6.2019 after the office hours by the Tahsildar, Akole, but the copy of said relieving order was received in the office of the Tahsildar, Sangamner on 28.6.2019. Applicant had neither remained present before the Tahsildar, Sangamner for joining the duties on the transferred post in view of the relieving order dtd. 24.6.23019 issued by the Tahsildar, Akole nor submitted the joining report before the competent authority of the establishment section of the office of Tahsildar, Sangamner and

therefore he had not allowed the applicant to join the post. It is their contention that since the res. no. 3 remained present before him along with the joining report on 29.6.2019 in view of order dated 28.6.2019 issued by the Collector, Ahmednagar he has allowed the res. no. 3 to join his duties on the post of Circle Officer, Sangamner.

4. It is their contention that the posting of the applicant has been changed in view of the impugned order dtd. 28.6.2019, but his headquarters has not been changed and it has been kept as it is i.e. Tahsil Office, Sangamner. Applicant ought to have joined his duties on the post of Awal Karkoon, Tahsil Office, Sangamner. It is their contention that the res. no. 2 issued the transfer orders after considering the recommendations of the Civil Services Board on 31.5.2019. It is their contention that the res. no. 1 is empowered to make transfer of any employee on other post by modifying its earlier transfer order on administrative ground with prior approval of the immediate superior authority. It is their contention that the General Administration Department has issued Government Circular dtd. 11.2.2015 in that regard. On the basis of the said Circular the res. no. 1 modified the earlier transfer order of the applicant with prior approval of immediate superior authority i.e. the Divisional Commissioner, Nashik and

by following the provisions of the Transfer Act, 2005. There is no illegality in the impugned order and therefore they supported the impugned order and prayed to reject the Original Application.

5. Respondent No. 3 Shri Babasaheb K. Datkhile filed his affidavit in reply and resisted the contentions of the applicant. It is his contention that though the applicant is eligible for the interchangeable transfer same does not create any right in his favour. It is his contention that he has been transferred at the place of the applicant on promotion and accordingly he joined on the said post. Therefore the applicant has no right to claim the relief. He has denied that he has used political pressure on the competent transferring authority for getting the post of his choice. It is his contention that the applicant has been transferred in the same office and his headquarters has not been changed. This transfer is made on administrative ground and the impugned order is legal one and in accordance with the provisions of the Transfer Act, 2005. Therefore he justified the impugned order and prayed to reject the O.A.

6. I have heard the arguments of Shri V.B. Wagh, learned Advocate for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent nos. 1 & 2 and Shri S.S.

Dixit, learned Advocate for respondent no. 3. I have also gone through the documents placed on record.

7. Admittedly the applicant was initially appointed on Class IV post on 15.7.1989. He was promoted on the Class III post in the year 2001. On 29.6.2016 he was further promoted to the post of Awal Karkoon and posted at Tahsil Office, Akole, Dist. Ahmednagar. He completed three years' tenure on the said post and therefore vide order dtd. 31.5.2019 he has been transferred to the post of Circle Officer, Sangamner, Tq. Sangamner, Dist. Ahmednagar on the basis of the recommendations of the Civil Services Board and in view of the provisions of the Government Resolution dated 21.11.1995. There is no dispute about the fact that the Tahsildar, Akole has not relieved him immediately as he was engaged in the election work. On completion of election program the applicant was relieved on 24.6.2019. Applicant approached the office of the res. no. 2 on 25.6.2019 and submitted his joining report, but the res. no. 2 has not accepted it. Admittedly on 28.6.2019 the res. no. 1 issued the impugned order and modified the earlier transfer order of the applicant and posted him in the office of the Tahsildar, Sangamner, Dist. Ahmednagar as Awal Karkoon (Revenue) and posted the respondent no. 3 on his place as Circle Officer on promotion.

8. Learned Advocate for the applicant has submitted that in view of the G.R. dtd. 21.11.1995 the post of Circle Officer and Awal Karkoon are interchangeable & inter transferable and employees working on the said posts has to be transferred on either post on completion of three years. In view of the said G.R. after completing tenure of the post by the applicant as Awal Karkoon at Akole he has been transferred as a Circle Officer at Sangamner by the order dated 31.5.2019. Accordingly he reported to Tahsildar, Sangamner on 25.6.2019 for joining, but the Tahsildar has not accepted the joining report of the applicant and therefore he filed representation dtd. 27.6.2019 with the res. no.1. Respondent no. 1 thereafter on 28.6.2019 issued the impugned order without considering the representation of the applicant and modified the earlier transfer order dtd. 31.5.2019 and posted the applicant as Awal Karkoon (Revenue), Sangamner, Dist. Ahmednagar and posted the res. no. 3 at his place as Circle Officer. He has submitted that the res. no. 1 transferred the res. no. 3 at the place of the applicant by modifying the earlier transfer order dtd. 31.5.2019 without recommendations of the Civil Services Board. The impugned order is in contravention of the Transfer Act, 2005 and therefore he prayed to quash the same. He has further submitted that the impugned transfer order dated 28.6.2019 amounts midterm and mid tenure transfer order and it

has been issued by the res. no. 1 without following the mandatory provisions of sec. 4(4)(ii) and 4(5) of the Transfer Act, 2005. Therefore he has prayed to quash the impugned order.

9. Learned Chief Presenting Officer submitted that the res. no. 1 has followed the mandatory provisions of the Transfer Act, 2005 as well as the provisions of the Government Circular dtd. 11.2.2015 which provide that the competent transferring authority can modify the earlier transfer order by obtaining the approval of next higher competent transferring authority. He has submitted that the res. no. 1 had obtained the approval of the next higher authority i.e. the Divisional Commissioner, Nashik for complying the provisions of the Transfer Act, 2005 before issuing the modified transfer order dtd. 28.6.2019. Therefore he justified the impugned order and prayed to reject the O.A.

10. Learned Advocate for respondent no. 3 has submitted that the respondent no. 1 has issued the impugned order on administrative ground by considering the administrative exigency and by following the provisions of the Transfer Act, 2005 and there is no illegality. Therefore he supported the impugned order. He has submitted that usually the Court or the Tribunal could not interfere in the administrative orders of transfer and therefore this Tribunal cannot interfere in the impugned order. He has placed

reliance on the judgment of Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in case of **Bharat Ramkisan Shingade and Others Vs. the State of Maharashtra and Others** (**Writ Petition Nos. 3318, 3483 and 4492 of 2017**) decided on 17.4.2017, wherein it is observed as follows :-

“15. Here, it would be worthwhile to reproduce paragraph 9 of the judgment in the case of Ashok Ramchandra Kore and Anr. (supra), enumerating the guiding principles laid down by the Hon'ble the Supreme Court in various judgments.

"i) The courts should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rule or on the grounds of mala fides. (Mrs. Shilpi Bose & ors. Vs. State of Bihar & ors.) 10, 1990 DGLS (soft) 696 : 1991 (Supp.2) SCC 659 : A.I.R. 1991 SC 532.

ii) A Government servant holding a transferable post has no vested right to remain posted at one place or the other. Transfer order issued by a Competent Authority does not violate any of his legal rights. (Shilpi Boses's case (supra).

iii) Who should be transferred where, is a matter for the appropriate authority to decide. Unless the transfer order is vitiated by mala fides and is made in violation of any statutory provisions, the court cannot interfere with it. (Union of India &Ors. Vs. S.L. Abbas) 11, 1993 DGLS (soft) 409: 1993 (4) SCC 357 : A.I.R. 1993 SC 2444.

iv) Transfer of an employee is not only an incidence inherent in the terms of the appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. (State of Uttar Pradesh &Ors. Vs. Gobardhan Lal) MANU/SC/02/2004 : 12, 2004

DGLS (soft) 190 : 2004 (11) SCC 402 : AIR 2004 SC 2165.

v) Transfer made even in transgression of administrative guidelines cannot also be interfered with, as it does not confer any legally enforceable rights unless it is shown to be vitiated by mala fides or made in violation of any statutory provision and so long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments (Gobardhan Lal's case (supra)).

vi) The courts should not deal with transfer orders as if they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. They cannot substitute their own decision in the matter of transfer for that of competent authorities of the State. Even allegations of mala fides when made must be such as to inspire confidence in the court or based on concrete materials. (Gobardhan Lal's case (supra)).

vii) Allegation of mala fides should not be entertained on the mere making of it or on consideration borne out of conjectures or surmises. (Gobardhan Lal's case (supra)).

viii) Except for strong & convincing reasons no interference could ordinarily be made with an order of transfer. (Gobardhan Lal's case (supra))."

11. He has further placed reliance on the judgment of Hon'ble High Court of Bombay in case of **Shankarrao Narayanrao Jadhav Vs. the State of Maharashtra & Ors.** reported at **2011 (1) Mh. L.J. 210**, wherein it is observed as follows :-

"15. We must also add that transfer is an incidence of service and the Courts/Tribunals should not ordinarily interfere in such orders. The petitioner had completed his tenure of three years at Pune and was due to be

transferred even otherwise in the general round of transfers in April May, 2009. Despite this, it is clear that the applicants vigorously contested the transfer order. The Courts/Tribunals must curb such tendencies, lest the public administration may become a casualty. The public servants litigating against such transfer orders is not a healthy sign of good public administration and at the same time it is a manifestation of their oblique interests bringing their reputation under the clouds of suspicion. It would be, therefore, in their own interests that they follow the general transfer orders rather than challenging them before the Tribunal/Court.”

12. He has attracted my attention to the decision of Hon'ble High Court of Judicature at Bombay, Aurangabad Bench in case of **Kishor Vs. the State of Maharashtra** in **writ petition no. 5398/2009** decided on 21.10.2010 and in case of **Anil Marotrao Khobragade Vs. the State of Maharashtra and Others** in **writ petition No. 5199/2009** decided on 21.1.2010.

13. Learned advocate for respondent no. 3 has also placed reliance on the judgment of Hon'ble High Court of Judicature at Bombay in case of **State of Maharashtra Vs. Ashok Ramchandra Kore and Another** reported at **2009 (4) Mh. L.J. 163**.

He has submitted that as the applicant has not established mala-fideneess on the part of res. no. 1 in making transfer, this Tribunal cannot interfere with the impugned order. Therefore he supported the impugned order and prayed to reject the O.A.

14. I have gone through the documents on record. On perusal of documents it reveals that the applicant was due for transfer at the time of General Transfers of 2019. Therefore the concerned department made a proposal regarding transfer of the applicant from the post of Awal Karkoon, Tahsil Office, Akole, Dist. Ahmednagar to the post of Circle Officer, Sangamner, Tq. Sangamner, Dist. Ahmednagar. The said proposal was placed before the Civil Services Board in its meeting dtd. 29.5.2019. The Civil Services Board recommended the transfer of the applicant and accordingly the impugned order has been issued. Applicant has been relieved by the Tahsildar, Akole on 24.6.2019 and thereafter he submitted joining report to the Tahsildar, Sangamner on 25.6.2019. Thereafter the res. no. 1 issued the impugned transfer order dtd. 28.6.2019 modifying the earlier transfer order of the applicant dtd. 31.5.2019 and posting the res. no. 3 at his place as Circle Officer, on promotion. Record shows that the said proposal modifying the earlier transfer order dtd. 31.5.2019 and posting the res. no. 3 at the place of the applicant has not been placed before the Civil Services Board. Not only this, no reasons have been recorded in writing for modification of earlier transfer order of the applicant dtd. 31.5.2019 and making midterm transfer of the applicant as well as the res. no. 3. As the applicant has been transferred after 31.5.2019 the impugned

transfer order dtd. 28.6.2019 amounts to midterm and mid tenure transfer order. No doubt, the competent transferring authority is empowered to make midterm and mid tenure transfer of the employees on account of administrative exigency in special cases and in exception circumstances after recording reasons in writing with prior approval of next higher authority, but the competent authority has to comply the mandatory requirements of sec. 4(4)(ii) and 4(5) of the Transfer Act, 2005 before issuing the transfer order. Respondent no. 1 neither followed the mandatory provisions of sec. 4(4)(ii) and 4(5) of the Transfer Act, 2005 nor he placed the matter before the Civil Services Board for approval of midterm transfer of the applicant and the res. no. 3. He only sent the proposal for approval to the next higher authority and after receiving approval from the next higher authority he issued the impugned order dtd. 28.6.2019, which is in contravention of the mandatory provisions of sec. 4(4)(ii) and 4(5) of the Transfer Act, 2005. Not only this, no exceptional circumstances have been made by the res. no. 1 for modifying the transfer order of the applicant dtd. 31.5.2019 and making posting of res. no. 3 in his place. No reasons have been recorded in writing by the res. no. 1 for the said modification. Therefore the impugned order is in violations of the provisions of the Transfer Act, 2005 and G.R. dtd. 21.11.1995.

15. The impugned order has been issued without recording special reasons in writing and therefore it requires to be quashed. Record shows that the res. no. 1 effected the transfer of the applicant without any exceptional circumstances and without recording special reasons in writing. The said order has been issued to accommodate the res. no. 3 on the place of the applicant. This shows malice and mala-fideneess on the part of the res. no. 1. Therefore the impugned order requires to be quashed.

16. I have gone through the decisions referred by the learned Advocate for respondent no. 3. I have no dispute regarding the settled legal principles laid down therein. As the impugned order has been issued arbitrarily and with malice to accommodate the res. no. 3, the same requires to be quashed. Therefore interference of this Tribunal in the impugned order is necessary. In these circumstances, the principles laid down in the above cited cases are not attracted in this case and same are not much useful to the respondent no. 3.

17. In these circumstances, in my view, the impugned order is issued in contravention of the mandatory requirements of sec. 4(4)(ii) and 4 (5) of the Transfer Act, 2005 and G.R. dtd. 21.11.1995. Hence interference in the impugned order at the

hands of this Tribunal is called for and therefore it requires to be quashed.

18. In view of the discussion in foregoing paragraphs the present Original Application stands allowed. The impugned order dated 28.6.2019 modifying the earlier transfer order dated 31.5.2019 so far as the applicant is concerned is quashed. The Respondent No. 01 is directed to repost the applicant at his earlier posting i.e. as Circle Officer, Sangamner, Tq. Sangamner, Dist. Ahmednagar immediately. There shall be no order as to costs.

PLACE : AURANGABAD
DATE : 13th November, 2019

(B.P. PATIL)
ACTING CHAIRMAN

ARJ-O.A.NO. 569-2019 BPP (TRANSFER)