MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 506 OF 2016

DIST. : LATUR

Tatyarao s/o Ramrao Sagar,
Age 54 years, Occu. Service,
R/o Adarsh Colony, Latur,
Tq. & Dist. Latur. -- APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
General Administration Department,
Mantralaya, Mumbai ï 32.

(copy to be served on Chief Presenting Officer, M.A.T., Aurangabad)

2. The District Collector,
Latur, Dist. Latur.

3. The Sub Divisional Officer,
Sub Division, Ausa-Renapur,
Office at Latur, Dist. Latur.

4. The Tahsildar,
Tahsil Office, Renapur,
Tq. Renapur, Dist. Latur. -- RESPONDENTS

APPEARANCE : Shri Suhas P. Urgunde, learned Advocate for the applicant.

: Smt. Priya R. Bharaswadkar, learned Presenting Officer for respondents.

CORAM : HON'BLE SHRI J. D. KULKARNI, MEMBER (J)

J U D G M E N T

{Delivered on 24th day of November, 2016}

1. The applicant is working as a Talathi. In the present original application, the applicant has challenged the impugned transfer order dated 30.5.2016 issued by res. no. 3, whereby he has been transferred from the Sajja Samsapur, Tq. Renapur, Dist. Latur to Sajja Matola, Tq. Ausa, Dist. Latur on administrative ground. Admittedly, the applicant was transferred to Sajja Samsapur vide order dated 20.5.2014 and within a period of 2 years, he has been transferred to Sajja Matola.

2. According to the applicant, the impugned transfer order has been issued by the respondents before completion of his normal tenure of 3 years. The applicant has, therefore, claimed that the impugned order of his transfer be quashed and set aside and appropriate relief be granted in his favour by giving suitable directions to res. no. 3.

3. The res. nos. 2 to 4 have filed common affidavit in reply and justified the impugned order of transfer. It is stated that the applicant was only interested to perform the duties in Renapur Taluka and was not ready to join elsewhere. Earlier the applicant was transferred on administrative reason from Sajja Mahapur, Tq. Latur to Sajja Mangrul, Tq. Ausa in the year 2012. Thereafter the applicant himself has requested to transfer him on deputation at Sajja Pangaon, Tq. Renapur, Dist. Latur. Thereafter in the year 2013 by cancelling his deputation order the

applicant was again transferred to Mangrul, Tq. Ausa. Further in the year 2014 the applicant again requested to transfer him to Sajja Samsapur and therefore he was again transferred to Sajja Samsapur. It is stated that the applicantôs transfer order has been issued on account of administrative exigencies. The res. no. 4 the Tahsildar is the controlling authority and on his request the applicant has been transferred by the impugned transfer order.

4. The respondents submitted that the applicant is residing at District place Latur and not staying at Headquarters and, therefore, it became hard to contact him immediately. The applicant was not performing the work assigned to him i. e. the work related to students, recovery etc. The applicant was not complying with the orders issued by the Collector regarding compliance of Gram Adarsha Takta and he has not presented the Gaon Namuna no. 1 to 21. He was remaining absent in the team constituted to stop illegal excavation of the mining minerals and was also remaining absent in the meetings held at Talathi Office.

5. Heard Shri Suhas P. Urgunde, learned Advocate for the applicant and Smt. Priya R. Bharaswadkar, learned Presenting Officer for respondents. I have perused the application, affidavit, affidavit-in-reply and other documents filed on record.

6. The material point to be considered in this O.A. is whether the impugned transfer order of the applicant is issued on administrative ground and whether the said order is in contravention of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short Transfer Act, 2005) ?

7. There is no dispute that the applicantôs transfer is mid tenure as he has not completed 3 yearsôtenure at Sajja Samsapur. In the impugned order of transfer it is mentioned that the said transfer has been issued on administrative ground i. e. प्रशासकीय कारणावरुन.

8. The learned Advocate for the applicant submits that the applicant has been punished by way of transfer order and had it been fact that the applicant was misbehaving as alleged, the respondents ought to have taken administrative action in the form of D.E. against the applicant.

9. Perusal of the affidavit in reply on behalf of res. nos. 2 to 4 shows that the respondents are claiming misconduct on the part of the applicant. It seems that the said misconduct of the applicant is not taken as a punishment, but in the impugned transfer order it is mentioned that it is issued in the administrative interest. In para 9 of the affidavit in reply it is stated by the respondents as under :-

> ***"9. I further say and submit that the applicant is presently residing at the district place i. e. at Latur and not in Headquarters. Therefore it becomes very hard to***

contact him in the emergency. It is also part of record that regular work assigned to him i.e. work related to students, recovery and yearly Jamabandi are still pending with him. He has not followed the orders given by the Collector regarding compliance of Gram Adarsha Takta in spite of several requests made to him. Also he has not presented Gaon Namuma No. 1 to 21. He was regularly absent in the team constituted for to stop illegal excavation of the mining minerals. Further he was regularly absent in the meetings held time to time at Tahsil Office, Renapur and therefore it becomes very hard to take review of his work. The copy of said proceedings of meeting showing he was absent to the meeting is annexed herewith and marked at EXHIBIT "R-2".

It is further submitted that, total No. of Talathi in Renapur are 25 and 19 Talathis are presently working and therefore I have given additional charge to Talathi Sajja Bitargaon Taluka Renapur but the applicant denied to take additional charge. A copy of same office order is annexed herewith and marked at EXHIBIT "R-3". Thereafter I had given him additional charge of Talathi Sajja Koshtagaon and the same was accepted by him but denied to work orally. Therefore I had given the work of Talathi Sajja Koshtagaon to one Mrs. Sonawane but the applicant despite of several requests has denied to transfer the charge to the concern Mrs. Sonawane. Therefore I have given him a Notice u/s 17 (1) of M.L.R.C.1966 under strict supervision of Police and taken back additional charge from the applicant and handed

over to Mrs. Sonawane. The copy of said Notice is annexed herewith and marked at EXHIBIT "R.4"."

10. If the aforesaid averments in the affidavit in reply are considered as true, prima-facie, it seems that the applicant's posting at Sajja Samsapur must have caused inconvenience to the authorities in running the administration.

11. The competent authority to transfer the applicant was the Sub Divisional Officer, Renapur. It seems that the Tahsildar, Renapur has written one letter to the S.D.O. on 25.5.2016 (Annex. R.1 paper book page 19). The said letter discloses as to how it became difficult to the Tahsildar, Renapur to perform the administration due to non-cooperation of the applicant. The said letter is self speaking, which is as under :-

"महोदया,

उपरोक्त विषयाच्या अनुषंगाने सविनय सादर करण्यात येते की, श्री. सगर टि.आर., तलाठी हे दिनांक २०.०५.२०१४ पासून सज्जा समसापूर ता. रेणापूर येथे कार्यरत असुन त्यांचे वर्तनामुळे संपुर्ण तालुक्यातील तलाठी संवर्गातील कर्मचारी यांचे कार्यतप्तरतेमध्ये परिणाम होत आहे, व त्यामुळे रेणापूर तालुक्यातील ***NLRMP****, वसुली, जमाबंदी विषयक कामे फार मोठया प्रमाणात प्रलंबित आहेत. त्यामुळे वरिष्ठांना नियमित अहवाल पाठविणे अवघड होत आहे. माहे जानेवारी २०१६ ते माहे मे २०१६ मध्ये रेणापूर तालुक्यातील तलाठी कर्मचारी यांची शासकिय कामासंबंधी आढावा बैठक घेतली असता, संबंधित तलाठी हे वारंवार बैठकीस अनुपस्थित राहीले आहेत. त्यांना अनेकवेळा भ्रमणध्वनीद्वारे व तोंडी समक्ष सुचना देवुनही संबधिताच्या वर्तनात सुधारणा झालेली नाही. तसेच संबधिताकडे*

पदभार असलेल्या तलाठी सज्जा समसापूरचा आढावा सुध्दा घेता आला नाही. रेणापूर तालुक्यातील बिटरगाव सज्जाचे तलाठी श्री. सुरवसे हे निलंबित झाल्यामुळे नजीकच्या सज्जाचे तलाठी म्हणून श्री. सगर यांना तलाठी सज्जा बिटरगांवचा अतिरिक्त स्वरूपात कार्यभार सोपविण्यात आला होता. परंतु संबंधित तलाठी यांनी माझे समक्ष सदर सज्जाचा अतिरिक्त पदभार घेण्यास इनकार केले त्यानंतर सदर सज्जाचा पदभार तलाठी सज्जा सेलु जवळगा सज्जाचे तलाठी श्री. संदेश कुलकर्णी यांचेकडे सोपविण्यात आला सदर तलाठयास सुध्दा संबंधिताने पदभर न घेण्यास चिथावणी दिली त्यामुळे श्री. संदेश कुलकर्णी व श्री. सगर टि.आर., या दोघांनीही सदर सज्जाचे कामकाम दरम्यानच्या काळात केलेले नाही. त्यामुळे तलाठी सज्जा बिटरगाव येथील जनतेची फार मोठया प्रमाणात हेळसांड होवुन शेतक-यांचे पिक विमा भरणे, फेरफार संबंधितचे कामे तसेच अत्यंत आवश्यक असलेले म्हणजेच मुलांचे शैक्षणिक कामे खोळंबले असल्यामुळे तलाठी सज्जा बिटरगाव अंतर्गत असलेल्या गावांतील लोकांची तहसिल कार्यालय रेणापूर येथे मोठया प्रमाणात गर्दी होत आहे.

संबंधित तलाठी हे लातूर येथे वास्तव्यास असुन ते मुख्यालयी हजर राहत नाही. त्यामुळे त्यांचेशी कसल्याच प्रकारचा संपर्क सुध्दा होवु शकत नाही. संबंधित तलाठी हे सकाळी 11.00 पुर्वी व सायंकाळी ६.00 वाजेच्या नंतर भ्रमणध्वनी बंद ठेवतात. संबंधित तलाठी यांना अनाधिकृत गौणखनिज उत्खनन व अवैध वाहतुक वसुल पथकामध्ये आदेश असतांनाही संबंधित तलाठी हे वसुली साठी हजर राहीले नाही याऊट पत्नीला माझे सोबत भ्रमणध्वनीवरुन बोलायला लावुन माझे पतीला कार्यलयिन वेळेनंतर कामे सांगावयाचे नाहीत अन्यथा मी आपले वरिष्ठांकडे तक्रार करिन असे बोलावयास भाग पाडले. संबंधिताच्या सदरील वर्तनामुळे कार्यलयिन शिस्तीस बाधा निर्माण झाली असुन संबंधिताच्या या वर्तनामुळे कार्यालयिन शिस्त बिघडत असुन इतर तलाठी कर्मचा-यांवर त्याचा दुष्परिणाम होत असुन प्रशासकिय कामकाजात अडथळा निर्माण होत आहे.

तरी, संबंधिताची रेणापूर तालुक्याच्या बाहेर बदली करण्यात यावी ही विनंती. करिता पुढिल कार्यवाहीस्तव सविनय सादर.”

12. On the basis of the letter of Tahsildar, Renapur the res. no. 3 thought it proper to transfer the applicant on administrative ground. He has already directed enquiry into the misconduct of the applicant. It seems that even show notices are also issued to the applicant to submit his explanation from time to time. The said notices are on record at Exh. R.4 dated 28.6.2016 and 1.7.2016. Due enquiry will be held as regards the misconduct of the applicant and, therefore, the S.D.O. might have thought it proper to transfer the applicant in the interest of administration and, therefore, the transfer order cannot be said to be punitive.

13. The learned Advocate for the applicant submits that as per sec. 4 (5) of the Transfer Act, 2005 as regards the tenure of transfer, the transferring authority has not obtained the approval of the immediately superior authority. The sub sec. 5 of sec. 4 reads as under :-

> ***"4. Tenure of transfer.***
> ***(5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior {approval of the immediately superior} Transferring Authority mentioned in the table of section 6, transfer a Government Servant before completion of his tenure of post."***

14. The impugned transfer order shows that it has been passed by the res. no. 3 the Sub Divisional Officer, Renaur, Dist. Latur and though the

copy of the said order has been referred to the Collector, Latur, there is nothing on record to show that prior approval of the Collector was obtained for the said transfer. The rule 4 (5) of the Transfer Act, 2005 clearly shows that prior approval of the immediately superior transferring authority is required. In view thereof, the impugned order seems to be in contravention of the provisions of rule 4 (5) of the Transfer Act, 2005, though said order seems to have been issued in the interest of administration. The respondents, however, may issue transfer order after obtaining appropriate prior sanction of the immediately superior transferring authority.

15. However, considering the fact that the applicant has not been relieved yet as he was protected by the order 27.6.2016 passed by this Tribunal, it is desirable that the applicant shall be continued in his post at Samsapur, Tq. Renapur, Dist. Latur till the annual general transfers of 2017 as admittedly the applicant will be due for transfer at the time of said annual general transfers of the year 2017. Hence, I pass following order :-

O R D E R

The O.A. no. 506/2016 stands allowed. There shall be no order as to costs.

MEMBER (J)