

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION NO.277/2014

AND

ORIGINAL APPLICATION NO.445/2014.

Gajanan Surbaji Kokade,
Aged about 48 years,
Occ- Service as Naib Tahsildar,
R/o Plot No.58, Diamond Nagar,
Near Gajanan Temple, Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Revenue and Forests,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Nagpur Division, Nagpur.
3. The Collector,
Nagpur.
4. Shri V.B. Kalamkar,
Aged about 57 years,
Occ- Service as Naib Tahsildar,
R/o Chitnis Nagar, Near NIT Garden,
Motha Tajbag Road, Nagpur.

Respondents

Shri Nitin B. Bargat, the Ld. Advocate for the applicant.
Smt. S.V. Kolhe, the Ld. P.O. for the respondent Nos. 1 to 3.
Shri J.Y. Shringarpure, Ld. Counsel for respondent No.4.

Coram:- S.S. Hingne, Member (J).

Dated:- 5th August, 2014.

Order

The applicant, a Naib-Tahsildar serving in the Revenue Department, has challenged the order dated 27.6.2014 (P.13) by which he is transferred from Nagpur to Warora.

2. Heard Shri Nitin Barga, the learned Counsel for the applicant, Smt. S.V. Kolhe, the learned P.O. for respondent Nos. 1 to 3 and Shri J.Y. Shringarpure, the learned Counsel for respondent No.4.

3. The applicant was working as Zonal Officer, Medical Zone B, Nagpur and now transferred as Naib-Tahsildar to Warora, District Chandrapur. By the same order, Mr. V.B. Kalalmkar, the respondent No.4 came to be posted in place of the applicant.

4. The learned Counsel for the applicant has challenged the order of transfer on three grounds:

- (i) It is mid-term transfer.
- (ii) The impugned order is in the mid tenure of the applicant.
- (iii) It is issued to favour Mr. V.B. Kalalmkar, the respondent No.4.

5. So far as the first ground of attack is concerned, as per Section 3 (4) of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as, "Transfer Act, 2005"), the orders are to be made only once in a year i.e. April or May and the impugned order is issued on 27.6.2014 which is a mid-term.

6. Truly, the order is issued about three weeks after the deadline on 31.5.2014. However, it is a matter of common knowledge that sometimes there can be delay due to administrative exigency or unavoidable reasons. As such, if there is a delay of certain days or orders are issued earlier to the deadline, no much capital can be made of it. Note can be taken of the fact that there were parliamentary elections and the Code of Conduct was in force at the beginning of year. However, apart from it, case is not pleaded by the respondents on that point

to get the benefit. In absence of that, the benefit can be extended to the respondents.

7. The second attack is on the ground that it is a premature transfer. According to the applicant, by order dated 26.7.2012 (P.14), he was transferred from Mouda to Nagpur. He has hardly completed two years at Nagpur and was not due for transfer.

8. The learned P.O. has submitted that in view of the provision of Section 4 (5) of the Transfer Act, with the prior approval, the competent authority can transfer the employee. Section 4 (5) of the Transfer Act lays down that in a special case, the competent authority, may record the reasons in writing with the prior approval of the immediately superior transferring authority as mentioned in Section 6 of the Transfer Act, can transfer the employee before completion of his tenure. The learned P.O. submits that after issuing the order by the Government, the impugned order of transfer is issued.

9. Perusal of the impugned order shows that there is a reference of the order issued by the Government in Revenue and Forest Department dated 18.6.2014. However, this impugned order is totally silent about the compliance of the provision of the Transfer Act. It reveals from the order dated 18.6.2014 that there is no cursory reference of the compliance of the provisions of the Transfer Act. The order only says that the Divisional Commissioner is authorized to issue the transfer order.

10. However, the matter does not end there. The learned P.O. has come with a case that the approval of the higher authority was taken and for that the file is maintained by the Mantralaya. It reveals from it that the transfer of the applicant is made on the basis of a letter issued by the Minister dated 28.5.2014.

On the basis of this letter, on 29.5.2014, note was prepared by the officials of the Revenue Department. There is mention in the note-sheet that Mr. Kalamkar (R.4) is not due for transfer. Further the order-sheet ends with the mention as the Minister has written, the transfer order is issued and the approval of the Revenue Minister is taken.

11. The learned counsel for the applicant vehemently urged that no reasons are recorded and there is no compliance of the provisions of Section 5 of the Transfer Act and that the order is issued at the instance of the letter of the Minister. He placed reliance on the case of **Pradeepkumar Kothiram Deshbhratar V/s State of Maharashtra and others reported in 2011 (5) Mh. L.J. 158**, wherein their Lordships of the Bombay High Court, Bench at Nagpur ruled that reasons must be recorded by the authority to effect transfer and the reasons should be in the interest of administration. It is further observed that the transfer cannot be only the wish or whim of any particular individual and cannot be ordered or treated as a special case to please the particular individual on mere asking.

12. It further reveals that there are no reasons at all mentioned as to why transfer has to be made. Reliance is also placed on a case reported in **2010 (2) Mh.L.J. 58, Shriprakash V/s State of Maharashtra** wherein Their Lordships of the Bombay High Court held that recording of reasons in mid term transfer is mandate. There is nothing on record to treat it as a special case in view of the observations made by their Lordships in **Pradeepkumar's** case (supra), the impugned order cannot be legal and valid in the eyes of law.

13. The learned counsel for the applicant submits that earlier Shri Kalamkar (R.4) was transferred to Umred vide order dated 11.2.2014 (P-16, A-4).

However, within a short span, he came to be transferred from Umred to Nagpur vide order dated 30.5.2014 (P-18, A-5). Thereafter, vide impugned transfer order dated 27.6.2014, he is again transferred. The learned counsel for the applicant proceeded to argue that within a span of five months, the respondent No.4 is transferred thrice, which shows that favour is shown to him. In above set of facts, the submission cannot be thrown away easily.

14. It is worthwhile to note, the transfer order of the respondent No.4 is issued by Govt. of Maharashtra and not by the Revenue Commissioner, who is the competent authority.

15. The learned counsel Shri Shringarpure submitted that the respondent No.4 was relieved and joined at Nagpur on 27.7.2012 in place of the applicant vide joining report is at page 15. It is well settled that joining and relieving hardly carries any significance to decide the legality and validity of the transfer order. The same cannot be decisive factor. The learned counsel for respondent No.4 submits that the applicant had not joined. This situation is created because the orders of transfer are totally silent about the compliance of the provisions of the Transfer Act. Usually, in all the departments, reference is made that the order is issued as per or in compliance of the provisions of the Transfer Act. Such type of bare reference is lacking in the impugned transfer order. It only refers the order of the Government which is silent about the same. Thus, they are creator of situation and that aspect has no bearing to decide this O.A.

16. From this glaring material on record, it is crystal clear that the transfer order is issued in contravention of the provisions of Transfer Act. As a sequel to these reasons, it is manifest that the impugned order of transfer dated 27.6.2014 is not legal and valid.

17. Consequently, the O.A. is allowed. The order dated 27.6.2014 (Annexure A-1, P. 13) issued by the Divisional Commissioner, Nagpur Division, Nagpur is quashed and set aside.

No order as to costs.

C.A. No.277/2014 also stands disposed.

(S.S.Hingne)
Member (J)

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