

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 171 OF 2019

DISTRICT : SOLAPUR

Shri Deepak Eknath Shinde,)
Dy. Collector, [Revenue], Office of)
Collector, District Solapur and residing)
At Solapur, Dist-Solapur.)
Email : donshinde1999@gmail.com)
Mob No. 9960600975)...**Applicant**

Versus

1. Government of Maharashtra)
Through Principal Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai 400 032.)...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : **Shri A.P Kurhekar (Member)(J)**

DATE : **8.11.2019**

ORDER

1. Heard Shri M.D Lonkar, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. In the present Original Application, the applicant has challenged transfer order dated 20.2.2019 as well as 25.2.2019, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985

3. The applicant was transferred from the post of Deputy Collector [Revenue], Solapur to the post of Deputy Collector (Land Acquisition No. 3] Solapur, by order dated 20.2.2019 with the approval of Civil Services Board as well as next competent authority, i.e. Hon'ble Chief Minister in terms of Section 4(5) of Transfer Act, 2005. However, later on by order dated 25.2.2019, fresh transfer order was issued and applicant was transferred from the post of Deputy Collector (Land Acquisition No. 3) to (Land Acquisition No. 1), Solapur.

4. The learned counsel for the applicant sought to assail impugned transfer order dated 20.2.2019 as well as 25.2.2019 contending that as per the purport of the impugned order dated 20.2.2019, applicant was transferred in terms of instructions issued by the Election Commission of India and further pointed out that the applicant's case does not fall within any of the parameters and instructions issued by Election Commission of India. The second ground is that though there is approval of Civil Services Board for transfer order dated 20.2.2019, there is no fresh approval for transfer order dated 25.2.2019, whereby he was transferred from the post of Deputy Collector (Land Acquisition No. 3), Solapur to Deputy Collector (Land Acquisition no. 1). According to him non-placing of the matter before the Civil Services Board in terms of judgment of Hon'ble Supreme Court in T.S.R Subramanian Vs. Union of India & Others W.P (Civil) No. 84/2011 & Ors, this lacuna is fatal to the Respondents and on that ground O.A needs to be allowed.

5. Learned Presenting Officer for the Respondent has pointed out that the matter was placed before the Civil Services Board which recommended for transfer of the applicant on the post of Deputy Collector (Land Acquisition No. 3), Solapur, which was vacant. She further pointed out that later in view of the request of Shri Koli, who was posted as Deputy Collector (Land Acquisition No. 1), which was related to election work, to assign him some other post, therefore, the matter was again placed before the Hon'ble Chief Minister who was pleased to modify the earlier transfer order and the applicant was transferred and posted on the post of Deputy Collector (Land Acquisition No. 1), Solapur, in

place of Shri Koli. She further submits that for modification of the posting, the matter was not required to be placed before the Civil Services Board

7. In view of the submissions advanced at the Bar, points raised for consideration whether impugned transfer order is in contravention of the provisions of Transfer Act, 2005.

8. Undisputedly, the applicant was not due for transfer as he had admittedly completed 8 months on the post of Deputy Collector (Revenue), Solapur which he held at the time of transfer order dated 20.12.2019. It is also equally true that the applicant's case does not fall within the parameter or instructions given by the Election Commission of India which inter alia provides for transfer of Government servant if he is posted in his home district or he had completed three years in that district during last four years or would be completing 3 years on or before 31st May, 2019. The instructions of Election Commission of India dated 16.1.2019 is age page 27 of the Paper Book.

9. However, there is no denying that though the applicant was not due for transfer, the matter was placed before the Civil Services Board to fill up the post of Deputy Collectors who were supposed to be entrusted with Election Duty in view of the ensuing Parliamentary Election for 2019. Therefore, the matter was placed before the Civil Services Board which had recommended for transfer of the applicant as Deputy Collector (Land Acquisition No. 1) Solapur on a vacant post, which was approved by Hon'ble Chief Minister and order was accordingly issued on 20.2.2019.

10. However, Shri Koli, who was posted as Deputy Collector (Land Acquisition No. 1) which was related to election work, made representation on health grounds, that he be given some other post. Therefore, matter was again placed before the Hon'ble Chief Minister, who was pleased to modify the posting of the applicant and he was posted as Deputy Collector (Land Acquisition No. 1), Solapur, which is related to election work. Admittedly, there is no fresh approval of Civil

Services Board for modification of the transfer order dated 20.2.2019. However, there is no denying that initially matter was placed before the Civil Services Board which recommended transfer of the applicant so as to fill in the post relating to election work.

11. As such, this is not a case where the matter was not at all placed before the Civil Services Board as mandated by the Hon'ble Supreme Court in T.S.R Subramanian's case. The opinion and recommendations of the Civil Services Board are only recommendatory and final decision rest with the executive which may differ with the opinion of the Civil Services Board.

12. As the post of Deputy Collector (Land Acquisition No. 1) was required to be filled in immediately, it being related to election work, in view of the Parliamentary Election of 2019, Hon'ble Chief Minister was pleased to modify the order and applicant was posted on the post of Deputy Collector (Land Acquisition No. 1), Solapur so that election work should not be obstructed. In other words, there is element of administrative exigency to fill in the post relating to election work and therefore, the Hon'ble Chief Minister being the highest competent authority was pleased to modify the order dated 20.2.2019 and passed order dated 25.2.2019, transferring and posting the applicant to the post of Deputy Collector (Land Acquisition No. 1), Solapur.

13. There is also reference of modification order dated 20.2.2019 in the transfer order dated 25.2.2019. As such, in nutshell, it was only modification in the transfer order dated 20.2.2019 and that too on account of administrative exigency so as to fill in the vacant post of Deputy Collector (Land Acquisition No. 1), Solapur, which related to election work.

14. As such, this is not a case where no reasons are forthcoming for mid-term transfer. Indeed, the necessity of the transfer of the applicant on the post of Deputy Collector (Land Acquisition No. 1), Solapur is clearly spelt out in view of ensuing Parliamentary Election of 2019.

15. Needless to mention that transfer is incidence of service and no Government servant has right to continue on the same post. It falls within the domain of the executive to fill in the post having regard to the administration and requirement of the department. Transfer orders can be interfered with only in case, if it is in contravention of the Transfer Act 2005 or malicious or abuse of process of law.

16. In the present case, it cannot be said that the impugned transfer order suffers from any such vice so as to render the transfer order illegal. The Tribunal cannot substitute its opinion for that of the Competent Authority, namely, Government which took decision after objective assessment of the situation. The reasons which weighed the authority cannot be subjected to scrutiny where there is compliance of the mandatory requirement of law.

17. At this juncture, learned advocate for the applicant sought leave to make representation to the Government for change of posting as the elections are already over. I see no reason to reject leave and representation if any made, will be decided by the Government on its own merit.

18. In view of the above, the challenge to the transfer orders dated 20.2.2019 and 25.2.2019 is devoid of merit and O.A deserves to be dismissed.

ORDER

The Original Application is dismissed with no order as to costs.

Sd/-
(A.P Kurhekar)
Member (J)

Place : Mumbai
Date : 08.11.2019
Dictation taken by : A.K. Nair.