

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 404 OF 2020**

DISTRICT : PUNE

Shri Sanjay Rambhau Kadam,)
Working as Deputy Commissioner,)
Commissionerate of Social Welfare,)
3, Church Road, Commissionerate for)
Persons with Disabilities,)
Pune 411 001.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Principal Secretary,)
Social Justice and Special)
Assistance Department,)
Mantralaya, Mumbai 400 032.)
2. The Commissioner,)
Commisionerate for Persons with)
Disabilities, Maharashtra State,)
3, Church Road, Pune 411 001.)
3. Shri Avinash Devsatwar,)
501, Ganga Legend,)
Near ICICI Bank, Besides)
Suryadatta Group of Institute,)
Bavdha, Pune.)...**Respondents**

Mrs Punam Mahajan, learned advocate for the Applicant.

Dr. Gunratan Sadavarte, learned Special Counsel for the Respondents.

CORAM : Justice Mridula R. Bhatkar (Chairperson)

DATE : 29.09.2020

J U D G M E N T

1. Heard Mrs Punam Mahajan, learned advocate for the Applicant and Dr. Gunratan Sadavarte, learned Special Counsel for the Respondents.
2. Learned Counsel for the Applicant files affidavit-in- rejoinder. Same is taken on record.
3. Learned Counsel for the Respondents files affidavit in reply dated 16.9.2020 of Prerna Deshbhartar, presently working as Commissioner for Persons with Disabilities, M.S, Pune.
4. The applicant, working as Deputy Commissioner, in the office of the Commissionerate of Social Welfare was earlier working at Commissionerate for persons with Disabilities. By order dated 18.8.2020, he was transferred from the said post in the same department to the post of Deputy Director, VJNT, OBC, SBC Welfare Commissionerate, Pune.
5. The grounds for challenge are as follows:-
 - (a) The applicant was transferred from Akola and posted as Deputy Commissioner in the office of the Commissionerate with persons with Disabilities by order dated 6.6.2019. So the applicant had not completed the normal tenure of three years, but had completed only 1 year and 2 months. Hence, it is a mid-term/mid-tenure transfer.
 - (b) While transferring the applicant, the Respondent-Government had not made out special reasons or an exceptional circumstances. Hence, Sec 4(4)(2) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred as 'ROT Act 2005' for brevity) ROT Act of 2005 were not complied with.
 - (c) The transfer of the applicant is mainly for undue accommodation of Respondent no. 3, who is a private party.
 - (d) The applicant was transferred with malice.

6. Learned counsel for the applicant in order to substantiate the challenge to the transfer order, has argued that the special reasons as contended in the reply of the financial misappropriation or misconduct are nowhere mentioned in the noting before the Hon'ble the Chief Minister, except one complaint of one Bhai Vikas Nandve dated 26.9.2019, nothing is placed on record to make out a special reason as contended in the reply.

7. She further submitted that a mid-term/mid-tenure transfer without making out case of special circumstances is illegal. The transfer, if mid-term/mid-tenure needs to be substantiated with proper special reasons. In support of her submissions, she relied on the judgment of the Hon'ble Bombay High Court in Writ Petition 14469/2018 State of Maharashtra, through Secretary, R.A Kadam Patil, dated 3.1.2019. On the point of the recording of the reasons, she relied on the judgment and order dated 7.3.2013 in W.P 5465/2012, Kishor S. Maske, Vs. Maharashtra OBC Finance and Development Corporation & Others.

8. Learned counsel has further submitted that the applicant though was holding the same post on 13.8.2020 till 18.8.2020, the Respondent no. 3 was transferred and he took charge illegally on 13.8.2020. The learned counsel placed reliance on Rule 31 of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 and had submitted that the procedure of handing over and taking the charge is laid down in this rule. However, it is not followed. She further submitted that the allegations made in the reply that the applicant was not attending duty from 13.8.2020 or earlier is false.

9. While assailing the submissions of learned counsel for the applicant, learned special counsel Dr. Sadavarte, had submitted that our State is a Welfare State and the Department where the applicant was working was concerned with disabled persons. The State is required to deliver the goods to such persons efficiently and promptly. However, the applicant who was officiating in the said post and responsible to function honestly and efficiently has completely failed to perform his duty. There are many complaints received against the applicant of not only inaction,

but of corruption and misconduct. The Government by helping disabled persons has to give the results. However the applicant was throughout negligent and therefore, the applicant was transferred. The Government had made a special case with reasons for mid-term/mid-tenure transfer of the applicant. Learned Counsel further submitted that the applicant remained continuously absent from duty and therefore, the files were not moving and disabled persons were waiting for help. Learned special counsel further argued that the Respondents have followed the procedure under sec 4(4) & 4(5) of the ROT Act. The proposal was moved before the Hon'ble the Chief Minister who has approved the mid-term / mid-tenure transfer. Therefore, the submissions of learned counsel for the applicant on the point of non-compliance of the relevant provisions and procedure under ROT Act, 2005 are baseless.

10. Learned counsel further argued that the Respondent no. 3, private person is not accommodated unduly but he was waiting for the orders and therefore was posted to that post. Further no prejudice is caused to the applicant because of mid-term / mid-tenure transfer, which is in the same department and same building.

11. Perused the original file of the transfer of the applicant. The proposal for transfer was placed before the Hon'ble the Chief Minister on 10.8.2020 and the Hon'ble the Chief Minister has approved the said proposal of the transfers as per the annexures A, B & C. The name of the applicant is appearing in Annexure-C at serial no. 4. However, place of his posting is not mentioned in that Annexure. There is no mention of any special reasons or exceptional circumstances which is a ground for mid-term / mid-tenure transfer of the applicant. It is a proposal of general transfers and there is no whisper of any such mid-term transfer by giving special reasons. There should not be hanging sword of mid-term transfer unless specific reasons and grounds are mentioned in the proposal, which is placed before the authority competent to transfer as per Sec 6 of ROT Act. There is no dispute that the Hon'ble the Chief Minister had approved the transfer. However, nothing is placed before the Hon. Chief Minister that it is a mid-term transfer and why the

applicant is to be transferred under exceptional circumstances with special reasons.

12. In the case of Ravindra Anandrao Kadampatil, (supra) the applicant was transferred in the same office with a view to accommodate some other person. The Division Bench while upholding the order of the Tribunal observed that the transfer was malafide action to favour someone has rejected the petition.

13. The Division Bench of the Bombay High Court in the case of Kishore Shridharrao Maske's (supra) case, while scrutinizing the legality of the transfer order, has held as follows:-

“The mid-term or premature special transfer has to be strictly according to law, by a reasoned order in writing and after the due and prior approval from the competent transferring authority concerned for effecting such special transfer under the Act. The exercise of exceptional statutory power has to be transparent, reasonable and rational to serve objectives of the Act, as far as possible, in public interest. Mandatory requirements of the provision under Section 4(5) of the Act cannot be ignored or by-passed. The exceptional reasons for the special mid-term or premature transfer ought to have been stated in writing. Vague, hazy and meager expression such as “on administrative ground” cannot be a compliance to be considered apt and judicious enough in the face of mandatory statutory requirements.”

14. The purpose of ROT Act is to give stability, continuity to the policy & decisions and smooth working of the administration. If the Government finds any officer incompetent, dishonest or corrupt, then it is necessary to point out the complaints received by the Government against such officers. The complaints or the gist of such complaints should be incorporated in the proposal of mid-term/mid-tenure transfer. In the present case, I have not come across proper submission to that effect and therefore, this order does not stand under the law for want of compliance of Section 4(4) & 4(5) of ROT Act. Moreover, if such complaints of misconduct are received against any officer, then the said officer is to be informed and he should be given an opportunity to give explanation. Thus the principles of natural justice are required to be

followed by the Government in transferring such Government servants, which is also absent in the present case.

15. On the point of non-attendance of the applicant at the work place, no record is produced before the Tribunal to accept this submission. If applicant remained absent continuously, then he should have been issued memo by the higher authority, which is not given. Moreover, no D.E is initiated against the applicant. Under such circumstances, this order cannot be sustained. The learned counsel has also raised ground of malice, especially on the background of taking over charge of the post of the applicant by Respondent no. 3. Under Rule 31 of Maharashtra Civil Services (General Conditions of Services) Rules, 1981, a specific procedure of taking over and handing over charge is laid down, which carries substance, however, the charge can be also handed over as per the directions given by the higher authority. The affidavit in reply filed on behalf of the Respondents by Prerna Deshbharthar has given explanation about the financial repercussions when two officers are holding the same post and therefore it is left to the Government to decide the same.

16. In view of the above, Original Application is allowed and the impugned transfer orders dated 13.8.2020 and 18.8.2020 found illegal are hereby quashed and set aside. The applicant to continue to work as Dy. Commissioner, in the office of Commissionerate for persons with Disabilities, Pune.

Sd/-

**(Mridula R. Bhatkar, J.)
Chairperson**

Place : Mumbai

Date : 29.09.2020

Dictation taken by : A.K. Nair.