

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.105 OF 2015
WITH
MISCELLANEOUS APPLICATION NO.6 OF 2016**

DISTRICT : LATUR

1. Shri Dnyaneshwar Mahadeo Mali,)
Age 34 years, occ. Service,)
R/o C/o Collector Office, Latur,)
Taluka & District Latur)


2. Shri Anil Mahadeo Kachare,)
Age 35 years, occ. Service,)
R/o C/o Tahsil Office, Latur,)
Taluka & District Latur)..Applicants

Versus

1. The State of Maharashtra,)
Through Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai 400032)

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2. The Divisional Commissioner,)
Aurangabad Division, Aurangabad)
3. The Collector,)
Collector Office, Tal & District Latur)
4. Shri Vijay Wamanrao Kamble,)
Age 45 years, occ. Service,)
R/o C/o District Collector, Collector)
Office Latur, Taluka & District Latur)
5. Shri Shaikh Shabbir Mohddinsab,)
Age 49 years, occ. Service,)
R/o C/o Sub Divisional Office,)
Nilanga, Tal. Nilaga, District Latur)
6. Shri Shivaji Manikrao Rathod,)
Age 42 years, occ. Service,)
R/o C/o Tahsil Office, AUSA,)
Taluka AUSA, District Latur)
7. Smt. Poonam Kashinath Balule,)
Age 27 years, occ. Service,)
R/o C/o Tahsil Office, Deoni,)
Taluka Deoni, District Latur)..Respondents



Shri R.K. Ashtekar – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for Respondents No.1-3

Shri Shrikant Sonkawade – Advocate for Respondents No.4 to 7

CORAM : Shri Rajiv Agarwal, Vice-Chairman

Shri R.B. Malik, Member (J)

DATE : 20th July, 2016

PER : Shri Rajiv Agarwal, Vice-Chairman

J U D G M E N T

1. Heard Shri R.K. Ashtekar, the learned Advocate for the Applicant, Smt. K.S. Gaikwad, the learned Presenting Officer for Respondents No.1 to 3 and Shri Shrikant Sonkawade, the learned Advocate for Respondents No.4 to 7.

2. This OA has been filed by the Applicants who are working as Clerks in Collector's office, Latur and who have challenged orders of the State Government, the Respondent No.1, transferring and posting the Respondents No.2 to 7 from other districts at the level of Awal Karkoon, thus blocking the promotional prospects of the Applicants.

3. Learned Counsel for the Applicants argued that the Applicants are working as Clerk-Typists in the Collector's office in Latur. The cadre of Clerk-Typist is a District cadre and the

Clerk-Typists are eligible to be promoted as Awal Karkoon on the basis of seniority, subject to passing departmental examinations. The Applicants state that transfer of Awal Karkoon from one district to another is considered a cadre change as the seniority of Awal Karkoons is kept district wise. Such transfers are governed by GR dated 3.6.2011, which provides guidelines for transfers outside cadre on request of a Government servant. Clause 3(5) of this GR provides that No-objection from the Head of Department of the office where transfer is sought is necessary (No Objection of Head of Department when a Govt. Servant is working is also necessary). Learned Counsel for the Applicants argued that the Respondent Nos.3 to 7 were transferred to Latur from other districts, though Collector, Latur, as Head of Department had clearly informed the Respondent No.1 that there were no vacancies in the cadre of Awal Karkoon in Latur district. Despite this position, the Respondent no.1 ordered transfer of the Respondents No.3 to 7 to Latur on different dates. Learned Counsel for the Applicants argued that the transfer of the Respondents to Latur District is clearly illegal, and such action of the Respondent No.1 has marred the chances of promotion of the Applicants.

4. Learned Presenting Officer (PO) argued on behalf of the Respondent Nos.1 to 3 that the GR dated 3.6.2011 mentions that there is no provision in The Maharashtra

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Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter called the 'Transfer Act') for transfers out of cadre on request. The Govt. is in the process of preparation of rules under Section 14(1) of the Transfer Act in this regard. Pending notification of such rules, GR dated 3.6.2011 has been issued. Learned PO argued that the No Objection certificates are required from the Head of Departments where a Govt. servant seeking transfer is working and where the transfer is sought. However, in the present case, the Govt. has considered the reports of Collector, Latur and has taken decision to transfer the Respondents No.4 to 7 after considering all relevant facts and circumstances.

5. Learned Advocate Shri Shrikant Sonkawade argued on behalf of Respondents No.4 to 7 (private respondents) that the private respondents were promoted on different dates as Awal Karkoons in the districts where they were working before their transfer to Latur District. The private Respondents were transferred to Latur District after vacancies were created there. The orders of transfer were issued under Section 4(5) of the Transfer Act, citing special reasons. Learned Counsel for the private respondents argued that the orders transferring the Applicants to Latur District are issued in compliance with the provisions of the Transfer Act and GR dated 3.6.2011.



6. The order of transfer of the respondent no.5 viz. Shri Shaikh Shabbir Mohddinsab is at Exhibit B (page 71 of the paper book). It reads that:

“उपरोक्त विषयाच्या संदर्भाकीत पत्रान्वये सादर केलेल्या प्रस्तावास अनुलक्षून आदेशावरून कळविण्यात येते की, श्री शेख शब्बीर, अब्दल कारकून, जिल्हाधिकारी कार्यालय, नांदेड यांची जिल्हाधिकारी कार्यालय लातूर यांच्या आस्थापनेवर शासकीय कर्मचा-यांच्या बदल्यांचे विनियम आणि शासकीय कर्तव्ये पार पाडताना होणा-या विलंबास प्रतिबंध अधिनियम, २००५ मधील कलम ४(५) अन्वये विशेष प्रकरणात असलेले अधिकार वापरून बदली करण्याचे आदेश निर्गमित करण्यास शासनाची मंजूरी देण्यात येत आहे.”

7. The order is issued ostensibly in exercise of powers under Section 4(5) of the Transfer Act. The aforesaid section reads as follows:

“(5) Notwithstanding anything contained in Section 3 of this Section, the competent authority may, in specific 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.”

8. Plain reading of this Section makes it clear that Section 4(5) of the Transfer Act is regarding transfer of a person before completion of his tenure. Here the transfer is from one

district cadre to another. It is not a case of transfer of a Government servant before completion of his tenure. GR dated 3.6.2011 itself makes it clear that there is no provision of out of cadre transfer in the Transfer Act. Clause 2 of the aforesaid GR reads:

“२. बदलीच्या अधिनियमात विनंतीवरून/संवर्गबाह्य बदली याबाबत निविदीष्ट तरतूद नाही. बदलीच्या अधिनियमात कलम १४(१) खालील तरतूदीनुसार तपशीलवार नियम तयार करण्यात येत आहे.”

9. This GR is issued by the GAD, which is the concerned department dealing with subject of transfers, postings, promotions etc. of Government servants. However, the respondent no.1 viz. Revenue and Forest Department has found that Section 4(5) of the Transfer Act permits transfer out of cadre. This is very strange to say the least. The order dated 17.10.2013 in respect of the Respondent No.5 is obviously legally flawed and cannot be sustained on this ground alone.

10. The Respondent No.1 in the affidavit in reply dated 3.12.2015 has stated that:

“6. I say that these four Awal Karkoons had made request to the Government for transfer to Latur District from other Districts in Aurangabad Division on various grounds and had completed the minimum

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prescribed service of 5 years. After receiving NOC from the Collector, Latur for one Awal Karkoon, namely Mr. Shabbir Shaikh, and a letter of the Collector stating that three other Awal Karkoons could not be accommodated in Latur, the department had submitted the proposals on independent files, clearly mentioning these facts along with the opinion that the concerned applicant cannot be transferred to Latur district. However, the then Hon'ble Minister of State (Revenue) on the relevant files approved the request of the applicants for transfer to Latur. Accordingly, the transfer orders of the concerned Awal Karkoons were issued by the Department citing the powers vested in the Government under Section 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005."

11. It is clear that at least in three out of four cases, no vacancies were available for accommodating private respondents no.4, 6 & 7. Collector, Latur has not given no objection certificate for transfer of these private respondents which is necessary requirement as per clause 3(5) of the GR dated 3.6.2011. This GR does not provide for relaxation of any conditions mentioned in the GR for out of cadre transfer. The orders of the State Govt. dated 12.9.2013 in respect of the

respondents no.4, 27.8.2014 in respect of respondent no.6 and 10.9.2014 in respect of respondent no.7 have been issued in blatant violation of the provisions of GR dated 3.6.2011. These orders also adversely affect the prospects of Clerk-Typists working in Latur District, who are waiting to be promoted as Awal Karkoons. None of these orders mentions why the recommendations of Collector, Latur were rejected by the Respondent No.1. None of these three orders are sustainable.

12. The orders of the Respondent No.1 approving transfers of the private respondents to Latur District are legally unsound and cannot be sustained. These orders are accordingly quashed and set aside. Resultant orders of the Respondents no.2 and 3 are also set aside. The Respondents No.4 to 7 are required to be repatriated to the Districts where they were working before being transferred to Latur District. This action should be completed within a period of four weeks from the date of this order. This OA is allowed accordingly.

13. The MA No.6 of 2016 has been filed by the Applicants praying that the costs of Rs.10,000/- imposed on the Respondents No.1 and 2 may be released to the Applicants. On application by the Applicants, the Registrar will pay Rs.5,000/- to each of them on proper identification, in case the costs have already been deposited. Otherwise, the same may



be paid after the cost is deposited by the Respondents No.1 and
2. The MA is disposed off accordingly.

Sd/-
(R.B. Malik) 20/7/16
Member (J)
20.7.2016

Sd/-
(Rajiv Agarwal)
Vice-Chairman
20.7.2016

Date : 20th July, 2016

Dictation taken by: S.G. Jawalkar.

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